

APPROVED: Meeting No. 16-95

ATTEST: *Paula Jewell*

MAYOR AND COUNCIL
ROCKVILLE, MARYLAND
Meeting No. 02-95

January 9, 1995

The Mayor and Council of Rockville, Maryland, convened in General Session in the Council Chamber, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland, on January 9, 1995, at 7:35 p.m.

PRESENT

Mayor Pro Tem Krasnow

Councilmember Robert E. Dorsey

Councilmember James T. Marrinan

Councilmember Nina A. Weisbroth

In attendance: City Manager Bruce Romer, City Clerk Paula Jewell and City Attorney Paul Glasgow.

ABSENT

Mayor James F. Coyle (on travel)

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Councilmember Krasnow was selected to serve as Mayor Pro Tem.

Re: City Manager's Report

1. For a number of years, the City has had a very active and aggressive legislative program wherein representatives of the City advocate the City's interest in Annapolis and at the Federal level. Mr. Romer noted that this year's legislative program, recently adopted by the Mayor and Council, has been put into brochure form and is being used in Annapolis as the State Legislative session begins. The brochure provides a clear and concise statement of the legislative goals of the Mayor and Council.

2. The City is pleased to host a return visit by Governor Schaefer on January 13, 1995. Approximately ten days ago, the Governor was in Rockville for a particular visit and was engaged in conversations with our elected officials regarding the downtown project and the remaining installment of state funding that Rockville is seeking. The Governor's interest was obviously captured, as he called and asked to return to Rockville to have a more in-depth look at the Town Center redevelopment project.

3. The Mayor and Council are involved in a series of worksessions with the City's various boards and commissions and will meet in worksession with the Rockville Seniors, Inc. and the Senior Citizens Commission on January 10, 1995, at 6:00 p.m.

4. Today, Councilmembers Dorsey and Marrinan joined Mayo Robertson, Chairperson of the Human Rights Commission, other members of the Commission, and staff at an awards luncheon on Capitol Hill to receive the "Making of the King Holiday Award" from the Martin Luther King, Jr. Federal Holiday Commission. Coretta Scott King was on hand to congratulate Rockville which is one of eight national winners of this award and the first municipality ever to be so honored. Mr. Romer displayed the Award which will be presented again at the City's Martin Luther King, Jr. celebration on January 16, 1995.

Re: Presentation of Certificate of
Appreciation to David Melnick, past
Chairman and Member of the Rockville
Planning Commission.

David Melnick served on the Board of Appeals from 1987 to 1990 and chaired the Board in 1989. In 1990, he was appointed to serve on the Planning Commission and was subsequently appointed to serve as the Commission's Chair in 1993. Councilmember Weisbroth

said that she had the opportunity to work with Mr. Melnick, and it was an honor to make the award to him for his many years of service.

Re: Proclamation declaring January 15-21, 1995 as **JAYCEE WEEK** in Rockville

Councilmember Marrinan read the Proclamation. Connie Pitt, President of the Rockville Jr. Jaycees, accepted the Proclamation and thanked the Mayor and Council and staff for their support over the past 30 years. Mayor Pro Tem Krasnow noted the Jaycees' upcoming "Taste of The Town" fundraiser on April 26.

Re: Drawing of winning raffle ticket for "An Evening at Glenview."

Bob Giesy, Civic Center Superintendent introduced David Basch on Viola and JoAnn Opgennorth on Violin, both members of the National Chamber Orchestra which is one of several sponsors of the third "Evening at Glenview" ticket sale. Following a performance of a Mozart sonnet, the winning ticket belonging to Dawn Brooky was drawn.

Re: Transmittal to Mayor and Council of proposed Master Plan for the Arts - 1995-2001.

John Moser, Chair of Arts Task Force and George Northway, Chairperson of the Cultural Arts Commission (CAC) presented copies of the City's first Arts Master Plan. Mr. Northway said that the Plan set certain goals: (1) to serve all ages, cultures, and abilities to the City's cultural arts program, and (2) to maintain Rockville as a regional center for the arts. He said the main challenge would be to accomplish these goals within affordability limits and the limited resources which were available for the arts. In Mr. Northway's opinion, the arts were not a frill; they take up a small share of the City's budget and there was a relationship between

the arts and the economic development of the City. Mr. Northway said that RCI recognized this because they were willing to contribute \$45,000 towards the fountain sculpture planned for Courthouse Square. He said the Master Plan fulfilled the CAC's prime responsibility to be the advisory commission for a total arts program for both visual and performing arts in the City. Mr. Northway expressed appreciation to both present and past Mayor and Councils for the tremendous support shown for the arts.

Mr. Moser said he was privileged to chair the task force. He noted the mission statement for the arts in Rockville *"to celebrate and sustain the City of Rockville's diversity and vitality through strong and expanded cultural arts opportunities and collaboration."* He said the task force would attempt cooperation and collaboration among the groups. Mr. Moser said the task force had the concurrence of all the arts groups in Rockville and the business community had been briefed on the plan. The recommendation was that the Plan be a six year document and implemented as of July 1, 1995. Mr. Moser thanked the CAC and staff of the Recreation and Parks Department for their help on the Plan.

Mayor Pro Tem Krasnow commented that the Plan was a major document; a similar one did not exist in the County. She said the Plan would broaden the focus for what was being done with the arts and it was an attempt to get everyone to work together.

Mayor Pro Tem Krasnow recognized District 17 Delegate Cheryl Kagan who was present. Ms. Kagan thanked the citizens for returning Delegates Mike Gordon and Kumar Barve to Annapolis and for sending in two new ones--herself and Senator-Elect Jennie Forehand. She encouraged residents to feel free to call on the Delegation (toll-free telephone number, 858-300

Re: Citizens Forum - This time is set aside to hear from any citizen who wishes to address the Mayor and Council.

1. Helen Heneghan, Chamber of Commerce expressed support for the pending appointment of Raymond Whalen to the Planning Commission. Ms. Heneghan announced that the Chamber would be repeating its very successful Bridal Show on February 5, 1995, from 12 noon to 5 p.m. at the Holiday Inn Crowne Plaza.
2. Alice Kelly, 401 W. Montgomery Avenue expressed concern about the Approval of Offer of Agreement to sell land to R.A.M Investing Limited. She said she understood that the appraisal for the property was done at the direction of the purchaser, who paid for it. Ms. Kelly commented on the City's acceptance of the appraisal price of \$130,000, and said she did not understand why the City did not do its own appraisal and act as its own agent in order to obtain the highest offer for the land.
3. Don Barrack, 2300 Rockland Avenue said that as a hobbyist car racer, he felt that the City ordinance regarding parking discriminated against him and others like him because oversize trucks and trailers were not allowed to park on the residential streets (with an exception given to recreation vehicles). Mr. Barrack said that while he understood the purpose of the law was to keep commercial vehicles out of residential areas, he did not understand why he could not have a trailer that held his race car while others could have a 30-foot motor home parked on the streets. Mr. Romer indicated that he had spoken with Mr. Barraick about his concern and staff would undertake a review of the issue.

Councilmember Dorsey acknowledged Monica Lyman, a student at Holy Cross, in attendance this evening. Miss Lyman conducted interviews with Councilmembers Marrinan and Dorsey during Council Drop-In.

Re: Appointments

Upon motion of Councilmember Dorsey, duly seconded and unanimously passed, James Moone was reappointed to serve on the Board of Appeals and rotated to serve as the Alternate member, and Alan Sternstein was reappointed to serve on the Board.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Daniel Milway was appointed to serve on the Compensation Commission. Councilmember Marrinan noted that he had an opportunity to serve with Mr. Milway on the Retirement Board and the City was privileged by Mr. Milway's continued volunteer efforts.

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, Charles Goldstein was appointed to serve as Chairperson of the Cultural Arts Commission.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Yasmin Lluveras, William Sherman, and Linda Thompson were appointed to the Human Rights Commission.

Upon motion of Councilmember Dorsey, duly seconded and unanimously passed, Raymond Whalen was appointed to serve out a one-year term on the Planning Commission.

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, Irving Shapiro was reappointed to serve on the Personnel Appeals Board.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Louis Cornet was reappointed to serve on the Recreation and Park Advisory Board and Charles Carrocio, Jr. was appointed to the Recreation and Park Advisory Board.

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, Stuart Crump was reappointed to serve on the Senior Citizens Commission.

Re: Approval of Minutes

Upon motion of Councilmember Dorsey, duly seconded and unanimously passed, the Minutes of Meeting No. 33-94 (November 14, 1994) were tabled to the January 23rd General Session.

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, the Minutes of Meeting No. 34-94 (November 21, 1994) were approved as written.

Re: Consent Agenda

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, the following Consent Agenda items were approved:

- (A) Award of Bid #19-95
To: Criswell Chevrolet
Of: Gaithersburg, Md.
In the amount of \$47,280.00

For: Purchase of three, passenger style mini-vans.

- (B) Rejection of Bid #24-95
To: All Vendors

For: Purchase of one, 3/4 ton crewcab four wheel drive pickup.

- (C) Award of Bid #25-95
To: Central Truck Center
Of: Landover, Md.
In the amount of \$25,114.99

For: Purchase of a one and a half ton service truck.

- (D) Award of Bid #26-95
To: Central Truck Center
Of: Landover, Md.
In the amount of \$23,227.00

For: Purchase of one stepvan.
- (E) Award of Bid #60-95
To: R.J. Crowley, Inc.
Of: Laurel, Md.
In the amount of \$81,750.00

For: Renovation at Glenview Mansion Bride's Vanity Room, Room 5 ceiling and storage room; construction of a unisex handicap family restroom, conference service area, and new staircase to third floor attic.
- (F) Introduction of Ordinance to Grant Application to Close and Abandon Public Way SCA94-0069, Mayor and Council of Rockville, Applicant.

To close and abandon a portion of E. Jefferson Street between Richard Montgomery Drive and Mount Vernon Place.
- (G) Authorization to Execute Agreement to Terminate Easement - Extinguishment of unneeded public sewer easement at Halpine Metro Center, 1586-1614 Rockville Pike.
- (H) Receipt of City financial reports summarizing the results of City operations for the period from July 1, 1994, through November 30, 1994.

Re: Approval of "Offer of Agreement" to sell land to R.A.M. Investing, Ltd.

The attached "Offer of Agreement" was negotiated with Ralph F. DeSena, President of R.A.M. Investing, Ltd. for the possible sale of City owned property located on Maryland Avenue.

Mr. Romer said that staff attempted to address the issues raised by the Mayor and Council at the General Session on December 12, 1994. Real Estate Specialist Bernie Fitzgerald explained that the contract was basically the same agreement before the Mayor and Council on December 12th, with the exception of one condition noted on page 5, in paragraph 12. The date was pushed back for potential settlement to August 14, 1995 instead of July 12, 1995. R.A.M. Investing Limited would like to purchase property owned by the City consisting of 1.23 acres and assemble it with an adjacent tract of land R.A.M. owned consisting of approximately .56 acres, to develop a five lot subdivision. Mr. Fitzgerald showed video footage of the City's property and the R.A.M. property. Also shown was the location of the existing private alley. The Offer of Agreement calls for the sale of the property at \$130,000, established by an independent appraisal. The developer will make a deposit of \$5,000. The City proposes to settle with the developer within 30 days of final subdivision approval but not later than August 14, 1995.

Mr. Fitzgerald said one important provision of the contract was that the City would make no representation as to the suitability of the City's property for assemblage and subdivision; the developer would have to go through all normal zoning and planning procedures. Mr. Fitzgerald said that planning files and court records were reviewed to determine as much as possible about the alley, and he showed video footage of the alley which explained the conditions as they exist in the field. Since December 12, staff met with Ken Reichard to show him the map

of the conditions as they existed and searched for alternatives for providing access to the rear of Lot #4, and Mr. Reichard proposed that the City establish an easement that would connect the rear of his property with the existing end of the alley. Staff considered Mr. Reichard's proposal but found that this would impact adjacent properties--Mr. Reichard would have to assume the removal and relocation of a fence line and some trees in the rear of Lot #5 that stood in the way, and if this was a possible alternative, an easement would be required for the adjacent Parcel 882 which would impact that property. Mr. Fitzgerald said that staff did not feel this was a viable alternative.

Mayor Pro Tem Krasnow asked if the alley could be made into a road at any time. Mr. Fitzgerald responded that the alley existed specifically to serve as access to a very few number of parcels and a Court decision established this access.

Mr. Glasgow added that the right-of-way was 16 feet and was substandard for secondary residential streets, and at the present time, if there was a desire to dedicate it, the City's normal practice would be to not accept it for dedication until it came up to City standards. He said this would create a problem as there was not enough room on either side to expand it to City standards. Mr. Glasgow said it was not likely in the future that it would be dedicated to a public use, nor was it likely that the City would want to accept it as a public road and maintain it as such. He said the status of the alley was the subject of a 1989 court case. The owner of Parcel 882 wanted to clarify his rights of access to the property in order to go onto Falls Road.

Mr. Glasgow said that for a number of years, the only way owners of Parcels 826, 827, and 847 were able to access Great Falls Road was by the alley, and it was clear from the Court papers that they had established that right. The Court declared it was a private alley and not a public one, and the owners of Parcel 882 did have a right of access to it. Otherwise, they

would be land-locked and there would be no way to access Falls Road. No mention had been made of any right of access for uses to any other lot owners other than the owners of the four parcels, because they all have access elsewhere. For at least three of the four parcels in question, this is the only way of access to a main thoroughfare and they were the only ones who had the right of use of access.

Mr. Romer said that he also conversed with Mr. Reichard and visited the property to try to work out alternative means of access to his backyard. Staff had developed some ideas and these were transmitted to Mr. Reichard.

At Councilmember Weisbroth's request, Mr. Fitzgerald spoke about the appraisal process. The property was appraised by Peter Mohalt, who held an NAI designation with the Appraisal Institute. Staff and R.A.M. jointly settled on Mr. Mohalt as the independent appraiser for the property. When property was sold or purchased, it was the City's practice to have an independent appraisal made. Mr. Fitzgerald said the appraisal was addressed to him and paid for by Mr. DeSena. Mr. Mohalt went through all normal procedures, had selected comparable sales of lots in the Rockville and Gaithersburg areas and through the adjustment process, came up with a value of \$130,000 which, Mr. Fitzgerald said was fair for a property of this nature in its present condition, configuration, and location. Mr. Fitzgerald said it was a little unusual for the applicant to pay for the appraisal; however this was a case of a property owned by the City for which we had no intention of selling a year ago when discussions first took place. Mr. Fitzgerald said in order for Mr. DeSena to express good faith interest in acquiring the City's property, staff suggested that he cause an appraisal to be made and paid for at his expense.

Councilmember Weisbroth noted Ms. Kelley's earlier comment regarding West End property values. Mr. Fitzgerald said in the appraisal, Mr. Mohalt analyzed five lots located

in Rockville and one in the Gaithersburg area. He noted that in appraising real estate, one wanted to select the most recent sale possible and the ones in the closest proximity to a subject property. He also said there had not been a very active real estate market in Rockville in the past couple of years. Mr. Fitzgerald said that he had reviewed the appraisal and found it to be acceptable to the City's standards.

Councilmember Marrinan asked whether the City had taken similar measures with the sale of other properties or with other public entities where the contractor was required to pay for the appraisal. Mr. Fitzgerald said the appraisal was prepared by Mr. Mohalt within all acceptable appraisal standards for an assignment of this nature. In addition to being the City's Real Estate Specialist, Mr. Fitzgerald said that part of his own qualifications included his being a certified licensed appraiser in Maryland, a member of the Appraisal Institute, and he has also been professionally designated with the Appraisal Institute since 1988. Mr. Fitzgerald said that he felt very confident with the value of the subject appraisal.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, the "Offer of Agreement" to sell land to R.A.M. Investing, Ltd. was approved. Councilmember Marrinan expressed concern about Mr. Reichard's access issue, and he encouraged the developer and Mr. Reichard to sit down and attempt to address the concerns.

Re: Adoption of Ordinance to amend Chapter 5 of the Rockville City Code entitled "Buildings and Building Regulations" so as to amend Article II "Building Restriction Lines," Section 5-18 "Exceptions" to authorize the Sign Review Board to grant modifications from the limitations on signs within the Rockville Pike building restriction lines.

Mayor Pro Tem Krasnow said that the discussion held in December raised many questions about the issue and the Mayor and Council directed that staff refer the matter to the City's boards and commissions. Mr. Romer confirmed that this review was underway by certain boards and commissions who will meet at various times during the month of January to discuss the issue. Mayor Pro Tem Krasnow said while she was happy to discuss the issue, she was not willing to take any action on the Ordinance, and she proposed that the matter be tabled to a future meeting after the boards and commissions provided their input.

Chief of Inspection Services Linda MacDermid said it was important to note that the building restriction line ordinance already permitted signs within the area between Rockville Pike and the building restriction line. She said this was an area half-way between the property line and the building restriction line, typically 75 feet along Rockville Pike. She said pole signs up to 100 square feet in area and 20 feet in height, located about 37.5 feet back from the property line were allowed. The building restriction line ordinance allowed one to go closer to Rockville Pike by reducing the area and the height of the sign in proportion to the proximity to the Pike. Ms. MacDermid noted there were a number of existing signs which utilized this formula and she displayed a board of photographs showing such signs. Ms. MacDermid said one reason the Ordinance was under consideration was for a proposed sign for Congressional Plaza Shopping Center. The City recently closed off one of the main access points to the shopping center from Congressional Lane and the primary entrance into the center was now through an entrance not accessible by a traffic light. In response to a question from Mayor Pro Tem Krasnow regarding whether the sign would block the view of drivers turning out into Rockville Pike, Ms. MacDermid said that the Sign Review Board approved the application on the condition that the

location be reviewed by the City's Traffic Engineer Joe Cutro. This was done and Mr. Cutro found that there would be no visibility issue.

Councilmember Weisbroth said the Mayor and Council had to decide whether to allow for any developer in the Rockville Pike Corridor (RPC) Zone to have a sign which did not meet the sign restrictions and she agreed that the issue was a complicated one.

Councilmember Marrinan asked what was the status of the review by the boards and commissions. Mr. Romer responded that transmittals had been made and were in the process of being made to the Planning Commission, Traffic and Transportation Commission, Economic Development Council, and the Rockville Pike Urban Design Committee. It was expected that the groups would meet and their recommendations would be available by the end of January. Mr. Romer suggested that the Ordinance would probably be brought back before the Mayor and Council in February.

Councilmember Dorsey, reacting to Councilmember Weisbroth's question regarding opening the modification to any business on Rockville Pike, said in one conversation he had with staff, a 900-foot front footage limitation was suggested that might narrow the universe down to a smaller number of businesses. Councilmember Weisbroth said the original proposal before the Mayor and Council was that anyone in the RPC Zone could make the application. In the current report before the Mayor and Council, it was suggested that consideration be given to limiting the universe, and she said this was an issue the Mayor and Council would have to discuss in terms of fairness for some cases.

Mayor Pro Tem Krasnow said the report was very objective and thorough and it made clear that Chapter 5 had not been forgotten when the sign ordinance changes were incorporated in Chapter 25. Ms. Krasnow referenced three suggestions made by staff that might

help to solve the issues: (1) to have the Planning Commission deal with these cases rather than the Sign Review Board in terms of the detailed site plan, and the Sign Review Board would deal with hardship situations; (2) to limit the area to 900 feet of frontage under a single ownership which would greatly limit the scope and address the issue of fairness; and (3) to limit variances to those signs which identify a property or site generally as opposed to advertising signs.

Ms. Krasnow said that she hoped that the boards and commissions reviewing the proposed amendments would take these suggestions into consideration.

Without objection, adoption of the Ordinance was tabled to a future General Session after sufficient information was received from the boards and commissions.

In response to a concern expressed by Councilmember Marrinan about potential adverse impact on Federal Realty, Harry Klacik, a representative of Federal Realty, said that while the sign was already built; the delay was not major problem. He noted that in other jurisdictions, ordinances allowed for a property with 100 feet of frontage to have the same size signs as properties with 900 or more feet of frontage.

Re: New Business

1. Councilmember Marrinan mentioned that on January 8, 1995, he along with Councilmembers Weisbroth and Dorsey, attended the Montrose Civic Association meeting regarding crime issues. The Police Department made a presentation about the Neighborhood Watch Program at this meeting which was the third in a series held by the community. Staff would be following up on how the lighting in the community impacted pedestrians rather than vehicles, as well as issues regarding tree trimming.

2. Mayor Pro Tem Krasnow reported that she and Councilmember Dorsey witnessed the placing of the Habitat for Humanity House on Lewis Avenue; the neighborhood seemed

receptive to the house being placed at that location, and Ms. Krasnow said she was excited to see the project progressing.

3. Mayor Pro Tem Krasnow noted the City's Martin Luther King, Jr. ceremony scheduled for January 16, 1995 at Richard Montgomery High School. Civil Rights activist Dorothy Height will be the Guest Speaker. Ms. Krasnow encouraged everyone to attend and bring their children to the event.

Re: Next Meeting

The Mayor and Council will meet in Worksession with Rockville Seniors, Inc. and the Senior Citizens Commission on Tuesday, January 10th. The Mayor and Council's next General Session will be held on January 23, 1995.

Re: Adjournment

There being no further business to come before the Mayor and Council, the meeting was adjourned at 9:09 p.m., to reconvene in Worksession on January 10, 1995, or at the call of the Mayor.